



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 6888-99
23 March 2000

CPE [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Corporal [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by Headquarters Marine Corps, dated 11 January 2000, a copy of which is attached. They also considered their file on your prior case, docket number 3843-99, and your rebuttal letter dated 15 February 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

Copy to:
The Honorable Carl Levin



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

6888-99

IN REPLY REFER TO:

1070

MI

11 JAN 2000

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF Corporal [REDACTED]
[REDACTED] USMC

Encl: (1) Copy of Corporal [REDACTED]'s MCTFS Basic Individual
Record

1. We reviewed Corporal [REDACTED]'s application and supporting documents concerning his request for removal of the Administrative Remarks page 11 entry dated 990212 from his service record.
2. MCO P1070.12J, Marine Corps Individual Records Administration Manual (IRAM), authorizes commanders to make entries on page 11 which are considered matters forming an essential and permanent part of a Marine's military history, which are not recorded elsewhere in the Service Record Book or the Marine's automated record and will be useful to future commanders.
3. One of the many leadership tools that a commander has at their disposal is counseling and rehabilitation for their Marines. Marine Corps policy is that reasonable efforts at rehabilitation should be made prior to initiation of separation proceedings and that the commander is authorized to document those efforts by a page 11 entry counseling entry per the IRAM. The Marine Corps Separation Manual, paragraph 6105, sets forth policy pertaining to counseling and rehabilitation. In cases involving unsatisfactory performance, pattern of misconduct, or other bases requiring counseling under paragraph 6105, separation processing may not be initiated until the Marine is counseled concerning deficiencies, and afforded a reasonable opportunity to overcome those deficiencies as reflected in appropriate counseling and personnel records. All reasonable efforts at rehabilitation should be made prior to initiation of separation proceedings.
4. This review readdresses the administrative correctness of the counseling entry per the dictates of the IRAM. An opinion and recommendation will be based upon "all supporting documentary evidence pertaining to the inaccuracy or injustice" that the petitioner is required to provide in support of his request per paragraph 1001.4 of the IRAM. The following comments concerning the page 11 entry are provided:

Subj: BCNR APPLICATION IN THE CASE OF CORPORAL [REDACTED] SMC

a. The counseling entry meets the elements of a proper page 11 counseling in that it lists specific deficiencies and recommendations for corrective action, where assistance can be found and state that the Marine was provided the opportunity to make a rebuttal statement. The Marine must annotate whether or not they choose to make such a statement and if made, a copy of the statement is filed in the service record. Corporal [REDACTED] acknowledged the counseling entry by his signature and chose to make a statement in rebuttal.

b. The commander determined that the information contained in the page 11 entry was of permanent value to Corporal [REDACTED] career, thereby documenting this event per the provisions of the IRAM.

c. Corporal [REDACTED] has requested mast with his new commander who "refuses to go back 8 months and delete a counseling entry made under a previous Commanding Officer.", citing reasons that Corporal [REDACTED] "had a full five months to seek justice" with that commander and "would be unable to determine an accurate picture of what actually took place on the day in question (Dec 31st, 98)".

d. Corporal [REDACTED] provides a copy of his Request Mast dated 991012 that does not support his request for removal of the page 11 entry. His Commanding Officer, Lieutenant [REDACTED] states in his disposition that he "continue to hear two different stories" concerning this matter.

e. Corporal [REDACTED] was the subject of yet another counseling subsequent to the page 11 entry (six days later) by Master Sergeant [REDACTED] the senior Marine in his chain of command at the Iwakuni Marine Corps Exchange.

f. Corporal [REDACTED] states that his NCOIC, Master Sergeant [REDACTED] "ordered Master Sergeant [REDACTED] to give me this counseling and had tried to get him to file charges" against Corporal [REDACTED] however, he does not provide evidence to support this claim.

g. Corporal [REDACTED] does not provide any additional evidence to support his claim of a "false entry 6511 (page 11)".

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[REDACTED] USMC

5. The following additional comments concerning the page 11 entry dated 990212 are provided:

a. In the absence of Corporal [REDACTED]'s submission of additional evidence to support his request, this office initiated personal contact with Master Sergeant [REDACTED] and attempted to locate Staff Sergeant [REDACTED] who provided a statement dated 31 March 1999.

b. Master Sergeant [REDACTED] stated that the senior civilian supervisor of the Iwakuni Marine Corps Exchange had originally drafted charges on Corporal [REDACTED] for violations of the Uniformed Code of Military Justice, however, he had decided to give him the benefit of the doubt and gave Corporal [REDACTED] another chance to prove himself by counseling him on 990218 at his level of supervision. Master Sergeant [REDACTED] stated that Corporal [REDACTED] could have been subjected to another commander's counseling (page 11 entry) or a more severe form of discipline by Nonjudicial Punishment that would have resulted in one or all of the following: a forfeiture of pay, a reduction in grade and restriction of off-duty hours.

c. Staff Sergeant [REDACTED] was demoted in rank to E-3 and subsequently discharged on 16 October 1999 from the Marine Corps.

d. It is noted that the page 11 entry did not prevent Corporal [REDACTED] from being eligible for retention in the United States Marine Corps. His automated records show that he reenlisted on 18 November 1999 for a period of four years and a copy of that automated data record page is attached as enclosure (1).

6. In view of the above, it is recommended that Corporal [REDACTED]'s request for removal of the page 11 counseling entry dated 990212 be disapproved.

7. Point of contact is Mr. [REDACTED]

[REDACTED]
[REDACTED]
Head, Field Support Branch
Manpower Management Information
Systems Division